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NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

VICTOR M. JAVITCH, RECEIVER, Javitch, Block, Eisen & Rathbone Penton Media Building, 14th Floor 1300 East Ninth Street Cleveland, Ohio 44114, Plaintiff, vs. FIRST MONTAUK FINANCIAL CORP., Parkway 109 Office Center 328 Newman Springs Road Red Bank, New Jersey 07701, and FIRST MONTAUK SECURITIES CORP., Parkway 109 Office Center 328 Newman Springs Road Red Bank, New Jersey 07701, and PAUL GIARMOLEO, Whitehorne & Company, Ltd. 28 Friend Street Hingham, MA 02043, Defendants.	CASE NO. 1:01CV 941 JUDGE WELLS MAG. JUDGE BAUGHMAN JUDGE **COMPLAINT** **(Jury Demand Endorsed Hereon)**

1. Plaintiff is a resident of northeast Ohio and the duly authorized and acting Receiver in the Case styled *Liberte Capital Group, L.L.C., v. James A. Capwill, et al.*, pending in the United States District Court, Northern District of Ohio, Eastern Division, and known as Case Number

5:99CV818. (A copy of said Court's Order appointing a Receiver is attached hereto as Exhibit A and made a part hereof. A copy of said Court's Order substituting Plaintiff as Receiver is attached hereto as Exhibit B and made a part hereof.)

2. As Receiver, Plaintiff is authorized to "take and maintain exclusive and complete custody, control and possession of all the assets belonging.... to Capital Fund Leasing ("CFL") and Viatical Escrow Services LLC ("VES")." Plaintiff is further authorized to:

> "institute, prosecute . . . all such cases and proceedings as are in the Receiver's opinion necessary or proper to preserve or protect the Receivership's property or to carry out the terms of this Order . . . in State or Federal Courts . . ." (See Exhibit A attached hereto).

As Receiver, Plaintiff succeeds to the rights of CFL and VES, and also to the rights of creditors of CFL and VES, such as viatical investors.

3. The Defendant First Montauk Financial Corp. is a corporation incorporated and residing in the state of New York, licensed and authorized to do business in a number of states, including Ohio.

4. The Defendant First Montauk Securities Corp. is a corporation incorporated and residing in the state of New York, licensed and authorized to do business in a number of states, including Ohio.

5. Defendant First Montauk Financial Corp. and Defendant First Montauk Securities Corp. (collectively referred to hereafter as "First Montauk") have offices in Ohio, have employees in Ohio, and conduct and transact significant business in Ohio through the U.S. mail, and interstate telephone, facsimile, e-mail and wire services.

6. Defendant Paul Giarmoleo is a licensed securities broker, on information and belief a resident of the state of New York, New Jersey, Massachusetts or Connecticut, and at all times relevant to this case an employee of First Montauk, at one of its offices in New York.

7. Upon information and belief Paul Giarmoleo has conducted securities business in the state of Ohio through the U.S. mail, and interstate telephone, facsimile, e-mail and wire services.

8. At all relevant times First Montauk was a controlling person of Paul Giarmoleo within the meaning of 15 U.S.C. 78t, and was the employer of Paul Giarmoleo.

JURISDICTION AND VENUE

9. This Court has diversity jurisdiction over this case pursuant to 28 U.S.C. § 1332 as the parties are residents of different states and the amount in controversy exceeds $75,000.

10. This Court also has federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331, the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), and the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961 et seq.).

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) based on the allegations in paragraphs 1 through 8.

BACKGROUND FACTS

12. One James A. Capwill provided accounting and escrow services to viatical funding companies through his wholly-owned escrow company, Viatical Escrow Services LLC (hereinafter referred to as "VES"), and his accounting firm, Capwill and Company (hereinafter referred to as "C&C").

13. C&C is a wholly-owned subsidiary of Mr. Capwill's holding company, CWN Group, Inc. (hereinafter referred to as "CWN").

14. Mr. Capwill was also, at all times, an officer and agent of Capital Fund Leasing LLC (hereinafter referred to as "CFL"), another wholly-owned entity which he used as a vehicle to invest money belonging to viatical investors, VES and the funding companies.

15. The two primary viatical funding companies serviced by Mr. Capwill and his various entities were Liberte Capital Group LLC ("Liberte") and Alpha Capital Group LLC ("Alpha").

16. Mr. Capwill and his various entities also serviced R.J. Management and EJT Management.

17. In his capacity as accountant and escrow agent, Mr. Capwill had control of how funds were distributed from various bank accounts in the names of Alpha Capital, Liberte Capital, VES, CFL, R.J. Management, EJT Management and others. Some or all of the moneys in these accounts were escrowed funds of investors, viators or funding companies, to be held in actual or constructive trust, and subject to fiduciary duties.

18. As an accountant and escrow agent to viatical funding companies, Mr. Capwill, his companies (VES, C&C, CWN and CFL) and his affiliates owed certain duties, including fiduciary duties and the duty to act reasonably, prudently and within the standard of care for similarly situated accountants and escrow agents.

19. Liberte and Alpha are currently involved in a civil action against Mr. Capwill and various entities alleging irregularities in the handling of investor funds escrowed for insurance premiums or awaiting placement in viatical contracts. That lawsuit is entitled *Liberte Capital Group, LLC, v. James A. Capwill, et al.*, and bears Case No. 5:99 CV 818 in the United States District Court for the Northern District of Ohio, Eastern Division (Akron).

20. Between September, 1998, and June, 1999, Capwill and CFL opened or caused to be opened brokerage accounts in their own names, and in the names of others, with First Montauk. The brokerage accounts include, but may not be limited to:

a. James Capwill – Account No. W63-2563433 (3GM); and

b. Vincent Norman – Account number unknown to Plaintiff.

Paul Giarmoleo was the listed account representative for each of these accounts.

In the case of James Capwill, the account was funded with moneys not the property of James Capwill and/or Capital Fund Leasing. In the case of Vincent Norman, the account was funded with moneys not the property of Vincent Norman, nor the property of James Capwill or CFL.

21. Upon information and belief there are additional brokerage accounts at First Montauk in the names of Mr. Capwill or his companies/affiliates or family.

22. The moneys used to open the brokerage accounts referred to in paragraphs 20 and 21 were wrongfully, negligently, intentionally, fraudulently or recklessly diverted from accounts of CFL, Alpha, VES, Liberte, R.J. Management, EJT Management, etc., to these brokerage accounts by Mr. Capwill in violation of Mr. Capwill's and CFL's, C&C's, CWN's and VES's standard of care, their fiduciary duties, and the securities and banking laws of the United States, as more thoroughly detailed in this Complaint. The money in the brokerage accounts was, in turn, misused, misappropriated, misspent, improperly invested and otherwise not returned to its rightful owner, or even to the source of the funds. Therefore, the named account holders were not the true account owners because they had no right to or title in any of the moneys or securities used to open the account.

23. The funds referred to in paragraphs 20 through 22 were wrongfully, negligently, intentionally, fraudulently, and recklessly diverted and otherwise wasted by Mr. Capwill in violation of his fiduciary duties and the standard of care owed by him as an escrow agent.

COUNT ONE – NEGLIGENCE

24. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 23 of this Complaint as if fully rewritten herein.

25. First Montauk and Paul Giarmoleo owed Mr. Capwill and the entities and affiliates listed in paragraphs 12 through 14 of this Complaint and, therefore, this Plaintiff, the duty to act as a reasonable securities brokerage and securities broker would do under the same or similar circumstances.

26. The duties set forth in paragraph 25 arise from common law, the fiduciary nature of the broker-customer relationship, the regulations, customs and usages of the brokerage trade, the Defendants' own internal policies and procedures, and various state and federal statutes.

27. Defendants were each negligent by failing to exercise due care and by failing to conform to the standard of care required of them as a securities brokerage house and securities broker, including, but not limited to, negligent supervision, failing to know their customer, recommending or permitting unsuitable investments, permitting the improper designation of accounts, and permitting inappropriate fund transfers.

28. Defendants made securities trades on the New York Stock Exchange on behalf of the entities listed in paragraphs 12 through 14.

29. New York Stock Exchange Rule 405(1) provides in relevant part that brokerage houses and brokers shall "[u]se due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization and every person holding power of attorney over any account accepted or carried by such organizations."

30. First Montauk and Paul Giarmoleo owed Mr. Capwill and the entities and affiliates listed in paragraphs 12 through 14 of this Complaint and, therefore, this Plaintiff, the duty to act as a reasonable securities brokerage and securities broker would do under the same or similar circumstances, including the duty to comply with New York Stock Exchange Rule 405(1).

31. Defendants were each negligent by failing to exercise due care and by failing to conform to the standard of care required of them under NYSE Rule 405(1).

32. New York Stock Exchange Rule 406 provides in relevant part that no brokerage house "shall carry an account on its books in the name of a person other than that of the customer."

33. First Montauk and Paul Giarmoleo owed Mr. Capwill and the entities and affiliates listed in paragraphs 12 through 14 of this Complaint and, therefore, this Plaintiff, the duty to act as a reasonable securities brokerage and securities broker would do under the same or similar circumstances, including the duty to comply with New York Stock Exchange Rule 406.

34. Defendants were each negligent by failing to exercise due care and by failing to conform to the standard of care required of them under NYSE Rule 406.

35. First Montauk and Paul Giarmoleo are members of the National Association of Securities Dealers.

36. NASD Rule 2310, known as the "Suitability Rule," provides in relevant part that:

> (a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.
>
> (b) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning:
>
> (1) the customer's financial status;

> (2) the customer's tax status;
>
> (3) the customer's investment objectives; and
>
> (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

37. First Montauk and Paul Giarmoleo owed Mr. Capwill and the entities and affiliates listed in paragraphs 12 through 14 of this Complaint and, therefore, this Plaintiff, the duty to act as a reasonable securities brokerage and securities broker would do under the same or similar circumstances, including the duty to comply with NASD Rule 2310.

38. Defendants were each negligent by failing to exercise due care and by failing to conform to the standard of care required of them as a member of the National Association of Securities Dealers, including a breach of NASD Rule 2310.

39. As a direct and proximate result of the Defendants' negligence the Plaintiff, Mr. Capwill, the entities referred to in paragraphs 12 through 14 of this Complaint and others (investors, funding companies, etc.) have been harmed by suffering serious financial losses.

COUNT TWO – NEGLIGENT SUPERVISION

40. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 39 of this Complaint as if fully rewritten herein.

41. First Montauk owed Mr. Capwill and the entities and affiliates listed in paragraphs 12 through 14 of this Complaint and, therefore, this Plaintiff the duty to properly supervise its employees, its investors and its customers. These duties arise from the same sources referred to in paragraph 26, above, and from NYSE Rule 405(2).

42. New York Stock Exchange Rule 405(2) provides that every brokerage house shall "[s]upervise diligently all accounts handled by registered representatives of the organization."

43. First Montauk was negligent by failing to properly supervise Defendant Paul Giarmoleo and/or other employees unknown to this Plaintiff. The unsupervised employees, in turn, were negligent by failing to exercise due care and by failing to conform to the standard of care required of them as securities brokers, including, but not limited to, failing to know their customer, recommending or permitting unsuitable investments and permitting inappropriate fund transfers, and as otherwise set forth in Count One of this Complaint.

44. As a direct and proximate result of First Montauk's negligent supervision, Plaintiff, Mr. Capwill, the entities referred to in paragraphs 12 through 14 and others (investors, funding companies, etc.) were proximately harmed by suffering severe financial losses.

COUNT THREE – BREACH OF FIDUCIARY DUTY

45. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 44 of this Complaint as if fully rewritten herein.

46. By virtue of their positions as a securities brokerage company and as a securities broker, the Defendants owed Mr. Capwill and the entities and affiliates listed in paragraphs 12 through 14 of this Complaint and, therefore, this Plaintiff fiduciary duties, including the highest degree of loyalty, trust, diligence, supervision, good faith and fair dealing.

47. Defendants breached their fiduciary duties by being negligent (Count One), negligently supervising (Count Two), committing fraud (Counts Four, Five and Seven), violating the securities laws (Count Seven), and engaging in racketeering activities (Count Six).

48. As a direct and proximate result of the Defendants' breach of their fiduciary duties, Plaintiff, Mr. Capwill, the entities referred to in paragraphs 12 through 14 of this Complaint and others (investors, funding companies, etc.) have been harmed by suffering serious financial losses.

COUNT FOUR – FRAUD

49. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 48 of this Complaint as if fully rewritten herein.

50. Defendants knew or, in the exercise of reasonable diligence, should have known, one or more of the following:

a. That Mr. Capwill, C&C, VES and CFL were in the business of accounting and escrow services;

b. That Mr. Capwill did not have substantial personal financial assets or resources;

c. That Mr. Capwill had no significant or meaningful experience in financial investing;

d. That Mr. Capwill's entities, CWN, CFL, C&C and VES did not have track records, and that the assets of those entities and/or the source of their funds were to be held in actual or constructive trust, and with fiduciary duties to others;

e. That the money/funds used to open the brokerage accounts listed in paragraphs 20 through 22 were not the personal funds of Mr. Capwill or Mr. Norman or the earnings, capital, assets and/or retained earnings of CWN, C&C, CFL or VES;

f. That the brokerage accounts listed in paragraphs 20 through 22 were opened in the names of people and/or entities who had no right, title or interest in the funds or securities in the account;

g. That the money/funds in the brokerage accounts were subject to trust or fiduciary duties and, therefore, should not have been invested in securities, speculative securities, margin accounts or other investments not suitable for escrowed funds subject to fiduciary duties, or used for personal living expenses;

h. That Mr. Capwill owed fiduciary duties toward those for whom the assets in the brokerage accounts were being held in trust; and

i. That after April 8, 1999, the money and securities in the brokerage accounts was restricted or otherwise subject to dispute in the Federal Court proceedings described in paragraphs 1 and 19 of this Complaint.

51. Despite knowing one or more of the facts set forth in subparagraphs a through i of paragraph 50, Defendants proceeded to knowingly and intentionally:

a. Accept moneys into the accounts listed in paragraphs 20 through 22, both initially upon account opening and on various occasions thereafter as listed in the individual account statements. (Such transactions are detailed in the account statements, which are in Defendants' possession, and are too numerous to be separately listed here.)

b. Invest or permit the investment of the moneys into securities, speculative securities, margin accounts or other investments not suitable for escrowed funds subject to fiduciary duties, or used for personal living expenses, as listed in the account statements.

c. Fail to restrain and supervise Mr. Capwill from spending account moneys for personal purposes.

d. Fail to prevent improper withdrawals and transfers of funds to Mr. Capwill personally or to others such as Mr. Norman.

e. Issued account statements with known misrepresentations as to account ownership for James Capwill. Defendants issued month-end statements to James Capwill, 9968 Pebble Beach Cove, Aurora, Ohio 44202-8131, for at least a period from November, 1998 to June, 1999.

f. Issued account statements with known misrepresentations as to account ownership for Vincent Norman. Defendants issued month-end statements to Vincent Norman, address unknown, for an unknown period of time.

g. After April 8, 1999 participated in or failed to prevent improper withdrawals and transfers of funds in violation of court orders or restrictions as listed in the account statements in the case described in paragraphs 1 and 19 of this Complaint. Specifically, Defendant Giarmoleo knew that the lawsuit described in paragraphs 1 and 19 was filed, that certain court orders restricted the accounts listed in paragraphs 20 through 22, yet thereafter participated with Mr. Capwill in the transfer of funds out of the accounts despite those restrictions. (The transfers are detailed in the account statements, which are in Defendants' possession, and are too numerous to be separately listed here.)

52. The acts set forth in paragraphs 49 through 51 constitute fraud.

53. As a direct and proximate result of the fraud listed in Count Four, the Plaintiff, the entities referred to in paragraphs 12 through 14 of this Complaint, and others (investors, funding companies, etc.) have been harmed by suffering serious financial losses.

COUNT FIVE – CONSPIRACY TO DEFRAUD

54. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 53 of this Complaint as if fully rewritten herein.

55. On information and belief, the transfers by Mr. Capwill of the funds of the entities referred to in paragraphs 12 through 14 of this Complaint to Defendants were part of a scheme wherein Defendants and Mr. Capwill agreed to remove funds from the entities referred to in paragraphs 12 through 14 of this Complaint for the purpose of wrongfully diverting money for their own financial benefit, with no intention of repayment.

56. On information and belief, the transfers by Mr. Capwill of the funds of the entities referred to in paragraphs 12 through 14 of this Complaint to Defendants were acts of fraud perpetrated on the entities referred to in paragraphs 12 through 14 of this Complaint and their investors by Defendants and Mr. Capwill. The transfers were made with the specific intention of wrongfully removing assets from the entities referred to in paragraphs 12 through 14 of this Complaint, damaging the assets belonging to the entities referred to in paragraphs 12 through 14 of this Complaint, fraudulently removing the assets belonging to the entities referred to in paragraphs 12 through 14 of this Complaint, and diverting the assets to the benefit of Defendants and Mr. Capwill.

57. As a direct and proximate result of the conspiracy to defraud listed in Count Five, Plaintiff, the entities referred to in paragraphs 12 through 14 of this Complaint and others (investors, funding companies, etc.) have been harmed by suffering serious financial losses.

COUNT SIX – RICO

58. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 57 of this Complaint as if fully rewritten herein.

59. The wrongful conduct of Defendants constitutes a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 and 18 U.S.C. § 1964.

60. Specifically, Defendants, by engaging in the acts described above, have received income derived, directly or indirectly, from a pattern of racketeering activity, and have used or invested such income, directly or indirectly, to operate the enterprises described in this Complaint, all in violation of 18 U.S.C. § 1962(a).

61. Additionally, at all times relevant herein, Defendants were associated with the enterprises described in this Complaint, and conducted and participated in the affairs of said enterprises through a pattern of racketeering activity, all in violation of 18 U.S.C. § 1962(c).

62. The wrongful activities of Defendants affected interstate commerce, as Defendants have used interstate mail, wire transfers, DTC securities transfers, and overnight delivery services to accomplish their wrongful activities.

63. Specifically, Defendants' pattern of wrongful conduct included, among other things, acts of mail fraud in violation of 18 U.S.C. § 1341, wire fraud in violation of 18 U.S.C. § 1343, and fraud by the conduct of financial transactions affecting interstate commerce in violation of 18 U.S.C. § 1956 and § 1957.

64. Defendants are under statutory and common law duties to prevent, or actively assist in preventing, money laundering, as that term is defined in 31 U.S.C. § 5340.

65. Mr. Capwill laundered money within the meaning of 31 U.S.C. § 5340, by removing funds from the accounts of the entities referred to in paragraphs 12 through 14 of this Complaint and others, placing them in accounts of the Defendants, and misusing, abusing, diverting, wasting and absconding with those funds for his own personal use or that of his friends, relatives and business associates.

66. Defendants knowingly participated in the activities described in paragraph 65.

67. In the alternative, Defendants negligently, recklessly or wantonly ignored or permitted Mr. Capwill to engage in the activities described in paragraph 65.

68. Plaintiff is a person injured in its business or property by reason of Defendants' violations of 18 U.S.C. § 1962(a) and (c), and therefore has standing to sue pursuant to 18 U.S.C. § 1964.

69. As a direct and proximate result of Defendants' wrongful conduct and violations of 18 U.S.C. § 1962(c), Plaintiff, the entities referred to in paragraphs 12 through 14 of this Complaint and others (investors, funding companies, etc.) have been damaged in an amount not less than $2,075,096.00.

70. As a direct and proximate result of Defendants' wrongful conduct and violations of 18 U.S.C. § 1962(a), Plaintiff, the entities referred to in paragraphs 12 through 14 of this Complaint and others (investors, funding companies, etc.) have been damaged in an amount not less than $2,075,096.00.

71. As a direct and proximate result of Defendants violations of 18 U.S.C. § 1962(a) and 1962(c) and 18 U.S.C. § 1964, Plaintiff , the entities referred to in paragraphs 12 through 14 of this

Complaint and others (investors, funding companies, etc.) are entitled to compensatory and consequential damages and to treble damages and the costs of this suit, including reasonable attorneys' fees.

COUNT SEVEN – AIDING AND ABETTING FRAUD AND VIOLATIONS OF THE SECURITIES LAWS

72. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 71 of this Complaint as if fully rewritten herein.

73. Mr. Capwill engaged in a fraudulent scheme to coax the investors whom Plaintiff represents to escrow and invest their funds with Mr. Capwill and/or the entities referred to in paragraphs 12 through 14 of this Complaint.

74. Defendants knew of or recklessly disregarded the possibility of the fraudulent scheme enacted by Mr. Capwill.

75. Defendants gave substantial assistance to Mr. Capwill by enabling him to divert the investors' funds, which Plaintiff is attempting to recover on their behalf, by conducting the securities transactions which Mr. Capwill directed Defendants to make.

76. In so acting, Defendants have aided and abetted Mr. Capwill's fraud and his violations of the federal securities laws, including 17 C.F.R. § 240.10b-5, 15 U.S.C. §78j, and 15 U.S.C. §78o.

77. As a direct and proximate result of aiding and abetting Mr. Capwill's fraud and his violations of the federal securities laws, Plaintiff, the entities referred to in paragraphs 12 through 14 of this Complaint and others (investors, funding companies, etc.) have been harmed by suffering serious financial losses.

COUNT EIGHT – CONVERSION

78. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 77 of this Complaint as if fully rewritten herein.

79. Mr. Capwill wrongfully diverted funds from the accounts of the entities referred to in paragraphs 12 through 14 of this Complaint and others (investors, funding companies, etc.) to First Montauk and Paul Giarmoleo.

80. At the time of this wrongful diversion described in paragraph 79 of this Complaint, Alpha, Liberte, R.J. Management, EJT Management and the original investors were the rightful owners of the funds in these respective accounts.

81. First Montauk and Paul Giarmoleo accepted the funds from Mr. Capwill despite the ownership rights in said funds and immediate right to possession of said funds by the entities named in paragraph 80, whose rights are now asserted by the Plaintiff.

82. A demand upon Defendants would be futile given the losses in the accounts and the transfers out of the accounts.

83. As a direct and proximate result of this conversion of funds, Plaintiff, the entities referred to in paragraphs 12 through 14 of this Complaint and others (investors, funding companies, etc.) have been harmed by suffering serious financial losses.

COUNT NINE – MONEY HAD AND RECEIVED

84. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 83 of this Complaint as if fully rewritten herein.

85. The funds entrusted with First Montauk and Paul Giarmoleo by Mr. Capwill belonged to the entities named in paragraphs 12 through 14 of this Complaint and others (investors, funding companies, etc.), whose rights are now asserted by the Plaintiff.

86. Mr. Capwill misappropriated and embezzled the funds by giving them to First Montauk and Paul Giarmoleo to pay for securities trades.

87. Although First Montauk and Paul Giarmoleo knew that the funds were the funds of others, Defendants retained the funds and effectuated the securities trades. First Montauk and Paul Giarmoleo received commissions as a benefit for the securities trades performed on Mr. Capwill's behalf.

88. First Montauk and Paul Giarmoleo, by accepting the funds and retaining the benefits of the trades, ratified Mr. Capwill's actions and, therefore, assumed the burdens and liabilities of the acts.

89. First Montauk and Paul Giarmoleo are therefore liable to Plaintiff under the doctrine of money had and received.

WHEREFORE, Plaintiff prays for the following judgment against the Defendants:

A. Compensatory damages in an amount in excess of $2,075,096.00;

B. Punitive damages in the amount of $8,000,000;

C. Reasonable attorney fees and all costs incurred by Plaintiff in this matter; and

D. Any and all such other relief as this Court deems to be just and equitable.

JURY DEMAND ENDORSEMENT

Plaintiff requests a trial by jury composed of the maximum number of jurors allowable by law.

Respectfully submitted,

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